

Environmental Justice

The Intersection of Land Use Planning
And
Deliberative Public Involvement



Environmental Justice?

- Injustice occurs when the proper response to conflict is inadequate or withheld due to political self interest, lack of power, or limited resources.
- It is not in the context of equal distribution of resources that environmental justice occurs, but rather in avoiding the “disproportionate burdens” of the negative consequences of resource use.



Standard State Zoning Enabling Act of 1922

- The intention was to improve our towns and cities and to “insure sufficient light and air at street level, so that cities would not be labyrinths of dark and dreary canyons;....prevent incompatible uses from locating cheek and jowl, so residential neighborhoods would be protected from factories;...insure density controls;...guarantee congestion-free central business districts;...and enable the municipal infrastructure to keep pace with growth”.
- Harr,Charles M., Kayden,Jerome S. 1989 Zoning and the American Dream. Chicago,IL Planners Press





In 1992, Unequal Protection: The Racial Divide in Environmental Law, a Special Investigation, published by the National Law Review, found:

- **Penalties under hazardous waste laws at sites having the greatest nearby white communities were nearly 500% higher than at sites with the greatest minority populations.**
- **Penalties in white communities were 46% higher than in minority communities for all environmental laws aimed at protecting citizens from air, water, and waste pollution.**
- **EPA action on Superfund site clean-up began 12-42 months later at sites in minority communities than in white communities.**



The American Planning Association (APA) has acknowledged the inadequacies of zoning and planning in the past. They have found that zoning and planning has:

- Failed to deliver on its loftier promises of producing high-quality working and living environments
- Been misused by suburban communities to exclude low income and minority families.
- Engendered corruption, because the basic concept of uniform treatment within and among districts has been frequently undercut by the issuance of variances, exceptions, and special permits.
- Missed opportunities to address problems regionally because zoning has been considered a local power.

- Arnold, Anthony. 1998. Planning Milagros: Environmental Justice and Land Use Regulation. Denver University Law Review





EXECUTIVE ORDER 12898

- Signed on February 11, 1994....."Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations"



Environmental Justice as defined by the National Academy of Public Administration and adopted by EPA:

-is the *fair treatment* and *meaningful involvement* of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.
- *Fair Treatment* means that no group of people, including racial, ethnic or socioeconomic groups, should bear a disproportionate share of the negative consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal environmental programs and policies.



- *Meaningful Involvement* means that:
- Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health.
- The public's contribution can influence the regulatory agencies decision.
- The concerns of all participants involved will be considered in the decision making process.
- The decision makers must seek out and facilitate the meaningful involvement of those potentially affected.



TITLE VI

- “No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in or be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance”.



Because State and Local Planning operate with Federal funding.....things changed quickly regarding:

- Comprehensive Planning.....offering a broad look at issues such as:
- Industrial facility siting
- Housing diversity and affordability
- Economic development in blighted areas
- Public infrastructure
- Environmental protection...both man made and natural hazards.....KATRINA?????
- And how these all interrelate



A Perspective on Citizen Participation

- “If the planning process is to encourage democratic urban governance, then it must operate so as to include rather than exclude citizens from participating in the process. *Inclusion* means not only permitting the citizen to be heard, but also means that he/she is able to become well informed regarding the underlying reasons for planning proposals, and be able to respond to them in the technical language of the planners”.
- Davidoff, Paul Journal of American Planners.....1965!



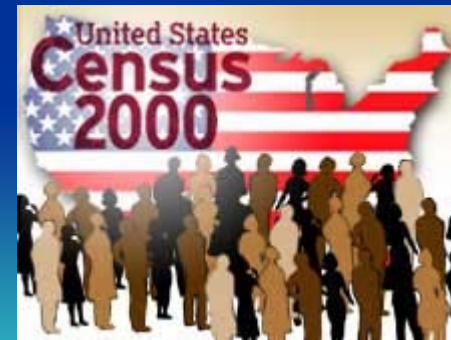
Assessment and Convening

Assessment Involves:

Community data gathering from demographic information such as race, ethnicity, income, poverty level status, age, rates of ownership.

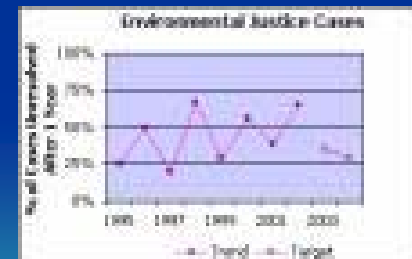
Consider community history, socio-cultural features, historic land use patterns, community identity, politics, education and skill level of area residents.

Noting zoning designations, vacant and blighted areas, condition of schools, parks etc.



Convening

- Interview the community residents
- Locate community leaders and potential stakeholders
- Identify the key issues and concerns
- Demeanor and tone of mediator must convey interest and empathy
- Prepare a Community Impact Statement (CIA)
- Assessment report and CIA forwarded to the governing body



PLURALISTIC PARTICIPATION PROCESS

- A variety of interest groups struggling for scarce resources.
- Each party intent on furthering it's use and application.
- Model requires that decision making process provide a forum for exchange and bargaining.
- No single interest should dominate.
- Identities of parties should not determine the outcome.
- Process has been around for decades.....now the requirement of inclusivity and legitimacy have been mandated (Exec. Order 12898).



DELIBERATIVE PARTICIPATION

- Citizens determine the common good through discourse and consensus, as opposed to discovering it through preexisting preferences.
- Process can adapt to low income and minority citizens:
- Hold Plan Commission meetings at times and on days that reflect flexibility for the work schedules of the working community.
- Meetings should be held within the affected community.
- Use translators in the dominant language, and provide minutes, agendas and major documents in the dominant language.



Essentials of the Deliberative Process

- Require and foster mutual respect as participants “deliberate” with each other as equals.
- Deliberative process must begin before the decision making takes place.
- Full access to all information for all parties.
- Low income and minority citizens have a inherent distrust of government process. They must be informed ...in advance....in their language...and in their neighborhood.

